

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 14

### **REMARKS**

#### **Amendments to the claims**

Claims 2-67 and 69 are pending in the application. Claims 34 and 41-47 have been amended. Support for the amendment to claim 34 can be found, for example, in Figure 12 and paragraph [0051]. See also Figure 6 and paragraph [0035]. Support for the amendment to claim 41 can be found, for example, in Figure 12 and paragraph [0052] of the specification. No new matter has been added.

#### **Improper Final Action**

Applicant respectfully submits that the finality of the Action mailed on May 31, 2005 is improper, as also discussed during a phone conversation on June 9, 2005 between the undersigned representative and the Examiner.

In particular, the Examiner changed his mind with respect to claim 2, allowable if combined with claim 1 in the first Action of January 11, 2005 (see section 9 under the heading 'Allowable Subject Matter') and, once so combined by the Applicant, deemed to be anticipated by Adams in the Final Action of May 31, 2005. Although an Examiner is free, with some exceptions, to change his mind during prosecution of an application, he cannot do so at the expense of the Applicant. In other words, the Examiner should have issued a further non-final Action instead of a final Action. See also MPEP 706.07(a): "*second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement . . .*" In the case at issue, the new ground of rejection (claim 2 anticipated by Adams) was not necessitated by Applicant's amendment, because Applicant amended claim 2 to incorporate the features of claim 1 to put claim 2 in condition for allowance as requested by the Examiner.

Therefore, the Applicant respectfully requests finality of the Action to be withdrawn.

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 15

### Claim Rejections – 35 USC § 102

In section 4 of the Action, the Examiner rejects claims 2, 3, 18, 19, 34-36, and 41-47 under 35 USC § 102(b) as being anticipated by U.S. Pat. No. 5,404,142 to Adams. The Applicant respectfully disagrees.

#### Claims 2, 3, 18 and 19

Claim 2 recites a *"switching arrangement comprising . . . a switching element . . . and a control arrangement to switch the switching element between [a] first condition and [a] second condition, wherein the control arrangement comprises analog processing elements"* (emphasis added).

According to the Examiner, (section 4, page 4 of the Action) Adams discloses a control arrangement comprising analog processing elements at column 7, lines 58-61. The Applicant respectfully disagrees.

Column 7, lines 58-61 of Adams recites relaxation of analog matching requirements for the components downstream of the switching element, i.e. components connected to the OUT-A and OUT-B signals of Figure 8 in Adams. Those components are not part of a control arrangement in Adams. See, for example, Figure 8 in Adams which shows a digital control arrangement (flip-flop and XOR gates) and Figure 9 which shows a digital circuit for the XOR/flip-flop arrangement.

Therefore, claim 2 is novel over Adams, together with claims 3, 18 and 19, at least by virtue of their dependency on claim 2.

#### Claims 34-36

The Applicant has amended claim 34 for clarity purposes to recite *"a clocking arrangement to pipeline the first and second input."* Support for the amendment can be

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 16

found, for example, in Figure 12 and paragraph [0051]. See also Figure 6 and paragraph [0035].

Apparently, the Examiner is misconstruing the term "pipeline." According to the Examiner (section 2 of the Action), pipeline means to swap or not to swap. The Applicant respectfully but strongly disagrees with this characterization. The Applicant submits that "pipeline" is a concept which is additional and different from a swap/no swap decision.

In accordance with the definition taken from the website dictionary.com (copy enclosed), a pipeline is a sequence of functional units which performs a task in several steps, like an assembly line in a factory. For example, and not by way of limitation, Figure 12 of the present application shows routers/switches 430, 450, and 450 pipelined by means of a clocking arrangement.

Should the Examiner still believe that Adam's swapping/no swapping reads on the term "*pipeline*," then the Examiner is requested, pursuant to the rules of practice, to make all his factual statements in Affidavit format. Compliance with 37 CFR 1.104(d)(2) is respectfully requested.

As also recited in claim 34, pipelining is additional to switching/not switching. In claim 34, switching/not switching occurs "according to [a] control element." On the other hand, the first and second inputs are pipelined by way of the "clocking arrangement."

Turning to Adams, the Applicant agrees with the Examiner that Figure 6 of Adams discloses a swap/no swap signal. However, there is no recitation, in Adams, that there is a clocking arrangement to pipeline inputs A and B going through the switch 20. Although a clocking signal 38 is shown in Figure 6 of Adams, such signal is not connected to the switch 20, i.e. it does not pipeline the inputs A and B, it only tells the circuit 30 when to produce the swap/no swap signal.

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 17

To the contrary, embodiments of the present invention clearly show that a switch may be pipelined as shown, by way of example and not of limitation, in Figure 12 and paragraph [0051] of the present application.

Therefore, claim 34 is novel over Adams together with claims 35 and 36, at least by virtue of their dependency on claim 34.

Claims 41-47

The Applicant has amended claim 41 for clarity purposes to recite "*a tuning arrangement to adjust a frequency spectrum of DAC errors, thus shaping the DAC errors away from a desired frequency band.*" Support for the amendment can be found, for example, in Figure 12 and paragraph [0052] of the specification.

The Applicant submits that claim 41 as amended is novel over Adams. The Applicant also notes that the feature "*to adjust a frequency spectrum of DAC errors*" is different from swapping/not swapping a signal.

Also in this case, should the Examiner still believe that Adam's swapping/no swapping reads on the wording "*to adjust a frequency spectrum of DAC errors,*" then the Examiner is requested, pursuant to the rules of practice, to make all his factual statements in Affidavit format. Compliance with 37 CFR 1.104(d)(2) is respectfully requested.

As also recited in claim 41, the tuning arrangement is additional to switching/not switching. In claim 41, switching/not switching occurs "according to [a] control element." On the other hand, the first and second inputs are frequency-adjusted by way of the "tuning arrangement."

Turning to Adams, the Examiner makes reference to Figure 8 of Adams and, in particular, to the elements X1, X2, and X3. The Applicant respectfully submits that elements X1, X2, X3 do not disclose a tuning arrangement and therefore do not perform any kind of frequency adjustment of the signals INA and INB of Figure 8 of Adams. In

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 18

particular, the written description of Figure 8 in Adams (column 6, lines 26-50) does not describe any kind of tuning.

Therefore, claim 41 is novel over Adams, together with claims 42-47, at least by virtue of their dependency on claim 41.

**Allowable subject matter**

In section 5 of the Action, the Examiner states that claims 37-40, although objected to as being dependent upon a rejected base claim, would be allowable if rewritten in dependent form including all of the limitations of the base claim and any intervening claims. The Applicant respectfully submits that claims 37-40 are allowable in their current form, in view of their dependency on claim 34, which is submitted to be allowable, as argued above.

In section 6 of the Action, the Examiner further states that claims 4-17, 20-33, 48-52, 53-67 and 69 are allowed. The Applicant thanks the Examiner for the indication of allowability of those claims.

\* \* \*

The Applicant submit that all claims of the application as amended herein are in condition for allowance. Prompt issuance of a Notice of Allowance is earnestly solicited.

USSN: 10/824,569  
Group No. 2819  
Examiner: Nguyen, Linh V  
Page 19

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, fax no. (571)-273-8300 on

August 8, 2005

(Date of Deposit)

Shannon Tinsley

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Enclosures:

- definition of term 'pipeline' (1 page)